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COLORADO  1437 Bannock Street  Denver, Colorado 80202  THE STATE OF COLORADO, ex rel. John W. Suthers, Attorney General,  Plaintiff,
Denver, Colorado 80202 THE STATE OF COLORADO, ex rel. John W. Suthers, Attorney General, Plaintiff,
THE STATE OF COLORADO, ex rel. John W. Suthers, Attorney General, Plaintiff,
Attorney General, Plaintiff,
Plaintiff,
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v.
DONALD STERLING WHITLOCK and ERIN REESE
WHITLOCK, individuals, jointly and severally; AXA
PRIVATE EQUITY, LLC; AXA PRIVATE EQUITY
HOLDINGS, LLC; GLOBAL HIGH YIELD FUND II,
LLC; AIG REAL ESTATE, LLC, AIG REAL ESTATE
HOLDINGS, LLC; ALLSTATE REAL ESTATE, LLC;
ALLSTATE INVESTMENTS, LLC; ALLSTATE
PRIVATE EQUITY, LLC; ALLIANZ US SHORT TERM
FUND III, LLC; GE CAPITAL REAL ESTATE, LLC; and
GE REAL ESTATE HOLDINGS, LLC, Colorado limited
liability companies.
Defendants.   COURT USE ONLY
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Plaintiff, the State of Colorado, upon relation of John Suthers, Attorney General for the State of Colorado, by and through the undersigned counsel, respectfully requests that this Court issue a Temporary Restraining Order and Preliminary Injunction pursuant to the Colorado Consumer Protection Act ("CCPA") C.R.S. § 6-1-110(1), (2009), and C.R.C.P. 65, to enjoin

Defendants from engaging in numerous deceptive trade practices as specified in Plaintiff's Complaint, to freeze all bank and other financial accounts owned by Donald Whitlock and Erin Whitlock, and for such other relief as this Court deems necessary and appropriate. As grounds for the foregoing, Plaintiff states as follows:

## **FACTUAL BACKGROUND**

- 1. For at least two years, Donald Whitlock and Erin Whitlock have committed theft, fraud, deception and identity theft in Colorado and other states. See Affidavit of Investigator Jack Wegert. Concurrent with the filing of this Motion, Plaintiff filed a Complaint against Defendants Donald Whitlock and Erin Whitlock, individually, and against 11 limited liability defendants that were fraudulently formed by the Whitlocks to commit fraudulent and deceptive trade practices. The Complaint alleges that the individual defendants have violated and continue to violate the CCPA, C.R.S. § 6-1-105(1) (2009), in the course of their business, vocation, or occupation.
- 2. Between April 24, 2007 and September 2, 2009, the Whitlocks formed at least 15 fraudulent limited liability companies with the Colorado Secretary of State in order to deceive consumers into believing that they are receiving a real estate loan commitment from a legitimate and well-known company. The Whitlocks' companies contain names similar or identical to the lending subsidiaries of prominent companies like ING Group, American International Group, Inc., The Allstate Corporation, the AXA Group, and General Electric. Because of the credit crisis and the dearth of financing options, the Whitlocks' deceptive practices have been effective and lucrative.
- 3. Since August 31, 2009 alone, the Whitlocks have walked away from banks with \$50,000 in cash that was stolen from consumers as a result of these deceptive practices.
- 4. Using these fraudulent companies, the Whitlocks have engaged in an elaborate and sophisticated practice of deceiving consumers to deposit or wire a commitment fee up to \$35,000 for what the consumer believes is to secure a real estate loan. The Whitlocks form companies that purport to be the actual lending subsidiary of a prominent corporation by using not just the actual name but Web sites, e-mail addresses, addresses, and logos that give the consumers the distinct impression that they are dealing with the legitimate company. The Whitlocks' fraudulent commitment letter bears the real company's logo and at times the name of that company's senior executive; this commitment letter and other documents appear detailed and professional, and have deceived even the most sophisticated persons. Donald Whitlock conducts multiple phone conferences with the victims about the real estate project and the terms of the loan. See Affidavit of Investigator Jack Wegert; See also Affidavits of victims Carlo Marzano, Donald Guyer, Tony James, Steven Zanderholm, Gris Bettle, and Mike Adkinson.
- 5. Once the victim wires or deposits money for the commitment fee, the Whitlocks cease communication, and never return the money. Instead, the Whitlocks transfer the money to

their personal accounts—either joint accounts or Erin Whitlock's individual account—or withdraw the money in person. See Affidavit of Investigator Jack Wegert.

- 6. The Whitlocks have stolen numerous identities to file and pay for articles of organization forming the companies with the Colorado Secretary of State. They have also used these stolen identities to open several bank accounts, credit cards, and Commercial Mail Receiving Agency (CMRA) accounts. They use these fraudulent bank accounts to conceal their involvement with the deception, including transferring and using the stolen funds. See Affidavits of identity theft victims Steve Nicholl, Wilfred Durden, and Robin Parsley. See also Affidavit of Investigator Jack Wegert.
- 7. The Whitlocks' deception occurs within the anonymity of the Internet. The defendant limited liability companies have no business operations, but instead use fictitious registered agents and principal street addresses that are CMRAs that allow the Whitlocks to read their mail online. The Whitlocks avoid any face-to-face contact with their victims and instead operate with the public entirely on the Internet, by e-mail, and by telephone using aliases and stolen identities. See Affidavit of Investigator Jack Wegert.
- 8. However, the Whitlocks always receive the stolen funds themselves—either in person at the banks through direct withdrawals or through wire transfers to their personal bank accounts. See Affidavit of Investigator Jack Wegert. Many of these transactions are also connected to the Whitlocks through telephone and IP records. See Affidavit of Investigator Jack Wegert.
- 9. For example, on May 30, 2008, a victim in Denver, Colorado wired \$20,000 to the Whitlocks' fraudulent company Allstate Investments, LLC, believing that he received a loan commitment from the actual Allstate Investments, a lending subsidiary of The Allstate Corporation. See Affidavit of Carlo Marzano. Then, on May 30, 2008 and June 2, 2008, the Whitlocks entered a Bank of America branch in Southport, North Carolina, and wrote two checks to cash for a total of \$1,900 and purchased an \$18,000 cashier's check payable to Erin Whitlock, which she deposited into her individual account with Branch Banking and Trust in Southport, North Carolina. See Exhibits 4-5 to Affidavit of Investigator Jack Wegert.
- 10. More recently, on August 25, 2009, the Whitlocks received a \$19,970 wire deposit to Defendant GE Capital Real Estate, LLC's Bank of America account as a result of a deceptive trade practice. On August 28, 2009 and August 31, 2009, Donald Whitlock visited Bank of America branches in Wilmington, North Carolina and cashed online checks from GE Capital Real Estate, LLC made payable to Don Whitlock. See Exhibits 8-10 to Affidavit of Investigator Jack Wegert.
- 11. And on October 2, 2009, a victim deposited \$15,000 and on November 17, 2009, a victim wired \$15,000 to Defendant GE Real Estate Holdings, LLC's Bank of America account as a result of deceptive trade practices. Between October 2, 2009 and October 7, 2009, the Whitlocks withdrew nearly \$12,000 from ATM machines using debit cards issued for this account in the names of stolen identities. On November 3, 2009 and November 20, 2009,

Donald Whitlock visited Bank of America branches in south Florida and presented four checks from GE Real Estate's Holdings, LLC's Wilfred Durden made payable to Don Whitlock totaling more than \$18,000. The Whitlocks stole Mr. Durden's identity to set up this account and forged the account holder's signature to cash these checks. See Exhibits 14-16 to Affidavit of Investigator Jack Wegert; See also Affidavit of Wilfred Durden.

- 12. The evidence of these banking transactions—transfers and deposits into their personal accounts, photo identification presented upon withdrawal of the cash, and bank surveillance—unequivocally connects Donald and Erin Whitlock to the deceptive trade practices that are the subject of the Complaint and this Motion.
  - 13. These transactions have been repeated in a similar fashion several times.
- 14. As evidenced by the recent transactions resulting in at least \$50,000 in stolen funds since late August 2009, the Whitlocks continue to engage in deceptive trade practices and this Court should enter orders to stop this conduct immediately and provide restitution to the victims.

## INJUNCTION STANDARDS

15. This Court is expressly authorized to issue a Temporary Restraining Order and Preliminary Injunction to enjoin ongoing violations of the CCPA by § 6-1-110(1), C.R.S (2009).

Whenever the attorney general or a district attorney has cause to believe that a person has engaged in or is engaging in any deceptive trade practice listed in section 6-1-105 or part 7 of this article, the attorney general or district attorney may apply for and obtain, in an action in the appropriate district court of this state, a temporary restraining order or injunction, or both, pursuant to the Colorado rules of civil procedure, prohibiting such person from continuing such practices, or engaging therein, or doing any act in furtherance thereof. The court may make such orders or judgments as may be necessary to prevent the use or employment by such person of any such deceptive trade practice or which may be necessary to completely compensate or restore to the original position of any person injured by means of any such practice or to prevent any unjust enrichment by any person through the use or employment of any deceptive trade practice.

C.R.S. § 6-1-110(1).

- 16. The Court may grant a preliminary injunction when:
  - a) there is a reasonable probability of success on the merits;
  - b) there is a danger of real, immediate and irreparable injury which may be prevented by injunctive relief;
  - c) there is no plain, speedy and adequate remedy at law;
  - d) the granting of the preliminary injunction will not disserve the public interest;
  - e) the balance of the equities favors entering an injunction; and
  - f) the injunction will preserve the status quo pending a trial on the merits.

Rathke v. MacFarlane, 648 P.2d 648, 653-654 (Colo. 1982).

- 17. The nature of the Whitlocks' deceptive scheme satisfies the factors relating to proof of irreparable injury, serving the public interest and balancing of the equities.
- 18. The temporary restraining order and preliminary injunction are sought by the Colorado Attorney General on behalf of the State of Colorado to enforce state laws affecting the public interest. Therefore, the Plaintiff is not required to plead or prove immediate or irreparable injury. Baseline Farms Two, LLP v. Hennings, 26 P.3d 1209, 1212 (Colo. App. 2001); Lloyd A. Fry Roofing Co. v. State Department of Air Pollution, 191 Colo. 463, 553 P.2d 200 (1976).
- 19. Nevertheless, the Defendants' deceptive practices are injurious to the public. The CCPA is designed to protect fair competition and safeguard the public from financial loss. Dunbar v. Gym of America, 493 P.2d 660, 667 (Colo. 1972). For this reason, when there is evidence that a person has committed a deceptive trade practice, there is prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition. C.R.S. § 6-1-105(2) (2009).
- 20. As indicated above, when a statute concerning the public interest is violated, the State does not need to present evidence of irreparable injury. Violation of a statute that protects the public, like the CCPA, creates evidence of an intent to injure competition. This conduct, therefore, creates irreparable injury. Furthermore, insofar as future victims and other legitimate lenders are concerned, continued violations will cause immediate and irreparable injury. If not enjoined, real estate developers will not only lose their money and business opportunities, but they will be diverting business away from legitimate lenders.
- 21. The public interest will be served by enjoining this scheme. This scheme serves no legitimate business purpose. Defendants are committing theft, including identity theft, fraud and deception. Real estate developers who are desperate for financing are losing not only money but

also the opportunity to get funding from legitimate lenders, because the interaction with the Whitlocks results in lost time, money and resources. The public interest will be served by enjoining this scheme.

- 22. The balance of the equities also overwhelmingly favors the entry of an injunction. Entering an injunction will serve the public interest by protecting consumers and fair competition. On the other hand, there are no legitimate interests being served by Defendants' scheme. The balance of the equities favors an injunction that halts this conduct and protects consumers and fair competition.
- 23. For all of the same reasons, there is no adequate remedy at law. A CCPA law enforcement action is equitable in nature. See State ex rel. Salazar v. General Steel, 129 P.3d 1047, 1050 (Colo. App. 2005). There is an immediate need to cease this conduct. Therefore, there is no adequate remedy at law that will remedy this conduct.
- 24. The nature of this scheme does not favor maintaining the status quo. As of now, Defendants are misusing identities, opening bank accounts, and obtaining money from consumers under false pretenses. There is a need to restore the status quo to a circumstance where the CCPA is being honored. As their scheme proceeds the status quo will only promote consumer losses, more identity theft, and injury to competition.
- 25. Finally, there is a reasonable probability that the State will prove its claims. The State has asserted five CCPA claims and one claim under the Colorado Limited Liability Company Act for dissolution of the currently active limited liability companies. The CCPA claims can be broken down into two categories. In the first category are claims that go to Defendants' false statement of affiliation with legitimate lenders. See C.R.S. § 6-1-105(1)(b) (making it a deceptive trade practice to knowingly make a false representation as to the source or sponsorship of services); and § 6-1-105(1)(c) and (e) (making it a deceptive trade practice to knowingly make a false representation as to the affiliation, connection association with or certification by another). The second category of CCPA claims address Defendants' bald misrepresentations as to their ability or intention to provide funding. See § 6-1-105(1)(e) (making it a deceptive trade practice to knowingly make a false representation as to the characteristics or uses of their services); § 6-1-105(1)(i) (making it a deceptive trade practice to advertise services with the intent not to sell them as advertised); and § 6-1-105(1)(u) (making it a deceptive trade practice to fail to disclose a material fact with the intent to induce the customer into the transaction).
- 26. The evidence submitted with this motion is sufficient to prove these claims. This evidence demonstrates the following:
  - Defendants formed fictitious LLCs under Colorado;
  - Defendants designed these fictitious LLCs to look like legitimate hard money lenders:
  - Defendants used these fictitious LLCs to solicit consumers for a loan;

- Defendants also used stolen identities to form these LLCs and solicit consumers for loans;
- Defendants convinced consumers to send them an advance fee for a loan using these false statements of facts and omissions.
- Defendants never provided the consumers with a loan. Instead they ceased all
  further communication with the consumers and converted their advance fee to
  their personal bank accounts and for their personal use.
- 27. The evidence as demonstrated by the affidavits and documentary evidence accompanying this motion shows that Defendants engaged in a pattern and practice of deceptive trade practices. This evidence demonstrates a substantial probability of success on the CCPA and dissolution claims.
- 28. Defendants will suffer no undue hardship by the entry of a Temporary Restraining Order or Preliminary Injunction because Defendants have no right to continue to engage in unlawful and deceptive trade practices in the State of Colorado, or to collect money from consumers as a result of such unlawful and deceptive conduct in violation of the CCPA. Moreover, Defendants have no right to unjustly benefit from such deceptive trade practices. Without an injunction, Plaintiff will be unable to adequately protect the public from Defendants' ongoing unlawful activities.

## CERTIFICATION REGARDING NOTICE OF TEMPORARY RESTRAINING ORDER PURSUANT TO RULE 65(b)

- 29. C.R.C.P. 65(b) allows the entry of a temporary restraining order without written or oral notice to Defendants if it clearly appears from the facts shown by affidavit or the Complaint that immediate and irreparable injury or damage will result from giving said notice. In view of the circumstances of this case, as alleged in the Complaint and contained in the affidavit of Investigator Jack Wegert, the entry of a temporary restraining order without notice to Defendants is necessary and appropriate.
- 30. Specifically, notice to Defendants of this Temporary Restraining Order would have the detrimental effect of giving Defendants time to liquidate their bank and other financial accounts, conceal property, and destroy files and other evidence of the unlawful transactions. The Whitlocks have proven to be skilled at concealing their identities through the use of numerous identity theft victims, CMRA accounts, virtual offices, telephone services, and other services such as Hide-My-IP address.com.
- 31. Given Defendants' fraudulent and deceptive practices, it is necessary and appropriate for the Court to issue an Order to freeze any bank or financial accounts into which consumer funds have been deposited or transferred by Defendants. See §. 6-1-110(1), C.R.S. (2009). This Order will maximize the likelihood of recovering funds to compensate victims, will prevent Defendants' unjust enrichment, and will also help deter additional unlawful transactions.

- 32. It is further necessary and appropriate to issue an Order that the Attorney General may impound Defendants' computers and files in order to assess consumer harm and completely compensate or restore to the original position any and all consumers injured by Defendants' deceptive and fraudulent practices. See id.; § 6-1-107(1) (e), C.R.S. (2009).
  - 33. Pursuant to Rule 65(c) C.R.C.P., Plaintiff is not required to provide a security bond.
- 34. Plaintiff respectfully requests that the Court set a date for an evidentiary hearing on Plaintiff's Motion for Preliminary Injunction within ten (10) calendar days following the Court's Order regarding Plaintiff's Motion for Temporary Restraining Order. Pursuant to C.R.C.P. 121 § 1-6, Plaintiff has filed contemporaneously with this Motion a Notice of Hearing on Plaintiff's Motion for Preliminary Injunction.

WHEREFORE, Plaintiff requests that this Court enter a Temporary Restraining Order and Preliminary Injunction that:

Enjoins the above-named Defendants, including Defendant Donald Whitlock and Defendant Erin Whitlock, individually, and any other persons under their control or in active concert or participation with Defendants who receive actual notice of this Court's Order:

- (a) From soliciting or accepting payment for any services of any kind in connection with any limited liability company organized under Colorado law.
- (b) From using any of the defendant limited liability companies for any purpose:

Requires Defendant Donald Whitlock and Defendant Erin Whitlock to:

Deactivate any and all Internet sites, domain names, URL addresses and registrations, any other Internet registration, and any other forms or materials that advertise or solicit any business associated with any limited liability company organized under Colorado law.

In view of Defendant Donald Whitlock's and Defendant Erin Whitlock's fraudulent and deceptive practices perpetrated in Colorado and other states, it is necessary and appropriate for the Court to freeze any bank and other financial accounts owned or established by Defendant Donald Whitlock and Defendant Erin Whitlock into which consumer funds have been deposited or subsequently transferred by either Donald Whitlock or Erin Whitlock. Thus, it is necessary and appropriate that Defendant Donald Whitlock and Defendant Erin Whitlock are enjoined:

a. From withdrawing, transferring or otherwise encumbering any funds from any account, including but not limited to those accounts in Defendant Donald Whitlock's and Defendant Erin Whitlock's names—either individual or joint—and those accounts set up in the names of stolen identities, at any financial institution into which Defendant

Donald Whitlock or Defendant Erin Whitlock deposited or transferred money received from consumers as a result of the deceptive and fraudulent trade practices;

- b. From negotiating any checks, money orders, wire transfers, drafts, or other negotiable instruments received by Defendant Donald Whitlock or Defendant Erin Whitlock, or any of their aliases, as a result of the deceptive and fraudulent trade practices;
- c. From spending, concealing, transferring, giving away, or disposing of any monies received by Defendant Donald Whitlock and Defendant Erin Whitlock as a result of the deceptive and fraudulent trade practices; and
- d. From transferring, concealing, giving away, or disposing of any property, including stock, shares, equity, real property, or personal property obtained by Defendant Donald Whitlock and Defendant Erin Whitlock as a result of money from the deceptive and fraudulent trade practices.
- e. This Court further orders that Defendant Donald Whitlock and Defendant Erin Whitlock immediately disclose to the Colorado Attorney General no later than two (2) days from service the institution name, address, telephone number, and account number of each and every bank and financial account that they have opened since January 1, 2008 through the present, including all accounts opened under aliases and other identities, and must provide access to those accounts to the Colorado Attorney General so that an accounting can be performed of such accounts.

It is further necessary and appropriate to issue an Order that the Attorney General may impound pursuant to C.R.S. § 6-1-107(1) (e) any and all computers and files and all banking and financial records related to or belonging to Donald Whitlock and Erin Whitlock in order to assess consumer harm and completely compensate or restore to the original position any and all consumers injured by Defendant Donald Whitlock's and Defendant Erin Whitlock's deceptive and fraudulent practices.

Any further Order as this Court deems necessary and appropriate to further the purposes of the Colorado Consumer Protection Act.

Respectfully submitted this 9th day of December, 2009.

JOHN W. SUTHERS Attorney General

First Assistant Attorney General ERIK R. NEUSCH\*

Assistant Attorney General Consumer Protection Section

Attorneys for Plaintiff

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